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5	Attorney for Defendant	
6	MARCOS ANTONIO CRUZ	
7	,	
8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF WASHINGTON (HONORABLE ROBERT H. WHALEY)	
0	(HONOKADLE KC	DERI H. WHALEI)
1	LINITED STATES OF AMERICA	
2		CR-09-2087-RHW
.3		MEMORANDUM IN SUPPORT
	ll vs.	OF MOTION TO COMPEL
4		INTERVIEW WITH GOVERNMENT
15	mineos mirono enez,	INFORMANT
6	Defendant.	
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8		
.9	TO: JAMES A. McDEVITT, UNITED STATES ATTORNEY	
20	I HOMAS J. HANLON, ASSISTANT	UNITED STATES ATTORNEY
21	Unan proper request by a defendant th	he government must make reasonable efforts to
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23	secure an informant's presence at a pretrial interview or at trial. If the informant is necessary	
24	to prove entrapment or the defense "otherwise shows a need for the information", the	
25	government must product the informant. <u>United States v. Montgomery</u> , 998 F.2d 1468, 1473	
26	(9th Cir. 1993). The failure of the government to use reasonable efforts to produce the	
27	informant may result in a new trial or dismissal.	
28	To invoke the government's duty to produce an informant, a need for the information	
29	must be established. Montgomery, 998 F.2d at 1473. This need arises where entrapment is	
80	the defense or where governmental misconduct is asserted. Where an informant played a	
31	significant role in the charged offense, the informant's testimony vital to the issue of guilt or	
32 33	innocence. Access to an informant is critical when the informant participates in the charged	
34	crime. Williams v. United States, 273 F.2d 781, 796 (9th Cir. 1965) (disclosing the	
-	MEMORANDUM IN SUPPORT OF	Timothy D. Cotterell
	MOTION TO COMPEL INTERVIEW	Attorney at Law

WITH GOVERNMENT INFORMANT - 1

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 informant "is especially a requirement of fairness when the informant has been an active participant in the crime charged").

Should the Court grant this request of an interview with the informant, the government must make reasonable efforts to obtain the informant's presence. Montgomery, 998 F.2d at 1473. If the government fails to secure an informant's presence for an interview, it is required to show that reasonable efforts were used. Id. at 1473-77. If the informant shows reluctance to cooperate, the government should use greater measures to obtain the informant's presence. United States v. Tornabene, 687 F.2d 312, 316 (9th Cir. 1982). Furthermore, if the government takes actions directly or indirectly which causes the informant's absence, the government is constrained to show reasonable efforts. Id. Ct. 1475-76.

Dismissal is an appropriate remedy if it is established that the government "purposefully saw to it that the confidential informant 'disappeared.'" <u>Id</u>. The Court should dismiss the indictment if the governments fail to secure the informant for trial. No other remedy would be available since this request has been made prior to trial and prior to any conviction.

I hereby certify that on February 21, 2010 I electronically filed the foregoing with the clerk of the court using the CM/ECF System which will send notification of such filing to the following: Thomas J. Hanlon, U.S. Attorney.

Respectfully submitted this 21<sup>st</sup> day of February, 2010.

<u>s/Timothy D. Cotterell</u>TIMOTHY D. COTTERELL (WSBA #19380)Attorney for Defendant